

<b>AMERICAN GEOTECH, INC.,</b>	)	<b>AGBCA No. 2000-162-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Robert W. Miller	)	
President	)	
American Geotech, Inc.	)	
P. O. Box 26176	)	
Salt Lake City, Utah 84126-0176	)	
	)	
<b>Representing the Government:</b>	)	
	)	
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Ogden, Utah 84401-2450	)	

**RULING BY THE BOARD SUA SPONTE**

\_\_\_\_\_  
January 26, 2001  
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**Before HOURY, POLLACK and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge WESTBROOK.**

This appeal arises out of Contract No. 50-8499-7-011 between the U. S. Department of Agriculture, Forest Service, Ashley National Forest, Utah (Respondent or FS), and American Geotech, Inc., of Salt Lake City, Utah (Appellant or American Geotech). Work under the contract consisted of constructing four new comfort stations and remodeling five existing comfort stations in the North Fork Area of the Forest. On July 26, 2000, the Board received from Appellant a timely appeal from a final decision of the Contracting Officer (CO) assessing \$1,209.84 in administrative damages for failure to complete work under the contract within the contractual performance period. The appeal was docketed as AGBCA No. 2000-162-1.

The Board has jurisdiction of AGBCA No. 2000-162-1 under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613, as amended.

### **FINDINGS OF FACT**

1. This appeal arises out of Contract No. 50-8499-7-011 awarded to Appellant September 10, 1997, by the U. S. Department of Agriculture, Forest Service, Ashley National Forest, Utah, for the construction of four new comfort stations and the remodeling of five existing comfort stations in the North Fork Area. The Board received Appellant's notice of appeal on July 26, 2000. The appeal was from the CO's decision of May 21, 2000, assessing \$1,209.84 in damages for late contract completion.

2. Appellant filed a Complaint received at the Board August 25, 2000. Respondent's Answer filed at the Board October 20, 2000, included a section entitled "Counter-claim" in which it sought damages in the amount of \$1,700 for revenues allegedly lost as a result of late completion. The CO's May 21, 2000 decision stated that in response to Appellant's March 8, 2000 letter, she had informed Appellant that only administrative costs (CO's Representative's salary and mileage), would be assessed; the Government had not (and would not) seek damages for unavailability of campgrounds. The decision does not indicate whether this post-March 8, 2000 communication was written or oral. If written, no date of the letter is provided.

3. Because of evidence that the CO had not issued a decision on the matter alleged in the counterclaim, the Board wrote the parties on October 18, 2000, providing Respondent 20 days from receipt of the letter in which to show cause why its "Counter-claim" should not be dismissed for lack of jurisdiction. Therein, the Board stated that if no decision had been issued, dismissal for lack of jurisdiction would be appropriate. In the event of a future decision and timely appeal, the Board would consolidate the two appeals for hearing. By letter dated October 27, 2000, Respondent notified the Board that it had no objection to dismissal of its "Counter-claim" without prejudice.

### **DISCUSSION**

Board jurisdiction under the CDA is "to decide any appeal from a decision of a contracting officer." 41 U.S.C. § 607(d). The right to initiate a CDA appeal lies with the contractor. 41 U.S.C. § 606. A final decision by the CO is "the linchpin for appealing claims" under the CDA. Without a CO's decision, the Board is deprived of jurisdiction. J.S. Alberici Construction Co. & Martin K. Eby Construction Co. (a joint venture), ENG BCA No. 6178, 98-2 BCA ¶ 29,875. Affirmative Government claims, as well as contractor claims, must be the subject of a CO's decision. Transportes Especiales de Automoviles, S.A. (T.E.A.S.A.), ASBCA No. 43851, 93-2 BCA ¶ 25,745, (Government demand for payment which failed to comport with FAR 33.211(a)(v) formalities regarding appeal rights, but was issued and transmitted concurrently with CO's decision denying contractor claim arising out of same operative facts held ineffective as a decision asserting the affirmative claim).

It is undisputed that the CO here did not decide the Government's claim for lost revenues. Indeed, it appears from the CO's own statement that at the time the decision was issued, no dispute on that

issue existed. A CO's decision is not a procedurally valid final decision unless there is a dispute to decide. Instruments & Controls Service Co., ASBCA No. 38332, 89-3 BCA ¶ 22,237. Without a valid decision appealed by the contractor, the Board lacks jurisdiction to decide the appeal.

**RULING**

The Board *sua sponte* dismisses Respondent's Counterclaim for lack of jurisdiction.

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**ANNE W. WESTBROOK**  
Administrative Judge

**Concurring:**

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**EDWARD HOURY**  
Administrative Judge

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**HOWARD A. POLLACK**  
Administrative Judge

**Issued at Washington, D.C.**  
**January 26, 2001**